1986 April 30

[A. LOIZOU, DEMETRIADES, PIKIS, JJ.]

GEORGHIOS K. GEORGHIOU AND OTHERS,

Appellants,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeals Nos. 4685, 4687).

Sentence—Equality of treatment—Constitution, Article 28—Disparity of sentences—Principles applicable—Failure to prosecute a principal culprit—A mitigating factor—Shop-breaking and stealing contrary to ss. 291, 294(a), 255 and 20 of the Criminal Code, Cap. 154—Carrying a fire-arm, the importation of which is prohibited contrary to ss. 2, 3(1)(a), 2(a) of the Firearms Law 38/74 as amended by Law 27/78 and s. 20 of Cap. 154—Forty-seven other offences, mostly breakings and stealings taken into consideration as regards appellant 2, who, also, had a long history of previous convictions—Thirty other offences, mostly shop-breakings and stealings taken into consideration in respect of appellant 1—Five other offences taken into consideration in respect of ex-accused 3—Six years' imprisonment on appellant 2, four years on appellant 1 and eighteen months on ex-accused 3—Ex-accused 3 a passive member of the gang—The benefit he derived therefrom was small—No disparity between the sentence on ex-accused 3 and the sentences on appellant—Failure to prosecute the fourth member of the gang, who, together with appellant 2, was the master-mind of the criminality of the gang—Correctly treated as mitigating factor.

The two appellants were found guilty on their own plea on two counts, one for shop-breaking and stealing and one for carrying a fire-arm, the importation of which is prohibited. Appellant 1 (hereafter Georghiou) was sen-

tenced to four years' imprisonment on each count and appellant 2 (hereafter Tenizis) was sentenced to six years' imprisonment on each count, sentences to run concurrently. A third accused (hereafter Theocharous) was sentenced to eighteen months' imprisonment. 5

In passing sentence on Tenizis the Assize Court took into consideration forty-seven other offences, forty-four of which were of similar nature with the offence in the first count, one for stealing the fire-arm referred to in count 2, and the last two referred to offences causing bodily harm, 10 insult and misbehaviour in public places. These series of offences started on 30.8.84 and stopped with his arrest on 11.9.85. The modus operandi was the same, i.e. mostly shop-breakings and house-breakings and stealing of safes carried away in stolen vehicles and smashed with 15 heavy tools for stealing their contents. Tenizis had a long history of previous conviction.

In passing sentence on Georghiou the Assize Court took into consideration thirty other offences of shop-breaking and stealing, starting on 15.8.84 and stopping upon his 20 arrest, followed disclosures made by Tenizis.

In passing sentence on ex-accused 3 Theocharous the Court took into consideration four offences of shop-breaking and stealing and one for stealing the said fire-arm. His criminal activity started on 16.6.85 and ended with his 25 arrest.

Georghiou and Theocharous were treated as having a clear criminal record.

The audacity of the gang cannot be doubted. In one case they parked and left in the yard of a police station 30 a stolen vehicle. In another case, they went on, broke in and stole the safe of Le Jardin restaurant, notwithstanding that their car had been noticed by the watchman, who in an effort to warn them switched on the light of the swimming pool and kept patrolling with his motor cycle until 35 3.55 a.m., when he saw the car stopping outside the kitchen of the restaurant and driven quickly away.

The masterminds of the offences were Tenizis and a fourth person, Yiouroukis, who, at the end, was not prosecuted because of the help he gave to the police. The total amount of money stolen in all cases was in the region of £30,000 and the value of the goods £7,000 to £8,000. The money was squandered in discoteques and places of entertainment and of the various goods very little was discovered. The benefit derived by Theocharous was at the most £200.

Held, dismissing the appeals: (A) *Per A. Loizou, J., Demetriades, J., concurring:* There is no disparity of sentences in the present case, but a proper and reasonable individualisation of same in the case of each accused. The trial Court clearly took into consideration the participation of each accused in the criminal activities in question and the respective financial benefits derived therefrom. Even if, however, there was some disparity, this Court would not interfere, as the sentences passed on the two appellants were correct. To reduce the sentences passed on them would result in a further incorrect sentence and this Court should not be prepared to reduce the longer sentence so long as the disparity is not particularly gross. In this case the sentence imposed is not manifestly excessive and there is no disparity in any way.

(B) *Per Pikis, J.:* The least active member of the gang was Theocharous, but he was one of the two implicated in the stealing of the firearm from the National Guard. In view of the gravity of the offences the sentences on the appellants were not as such excessive. Organised crime of this magnitute cannot but be condemned in the severest terms. Equality of treatment, safeguarded by Article 28 of the Constitution, is a salient feature of our administration of Justice. A sentence otherwise justified may become excessive on comparison with that imposed on a co-accused. Theocharous was, unlike the appellants, a passive member of the gang and reaped little benefit therefrom. His overall criminality was substantially lower than that of the appellants. Therefore, the conclusion, reached somewhat reluctantly, is that it was reasonably open to the trial Court to distinguish between the sentences as it

did. As regards the failure to prosecute Yiouroukkis, one of the principal culprits, the trial Court correctly treated it as a mitigating factor. Equality of treatment is an all embracing concept, encompassing the criminal process in its entirety. The trial Court ought to have made greater allowance than the one it made on account of this factor. However, in the circumstances, there is no room for interference by the Court of Appeal. 5

Appeals dismissed.

Cases referred to: 10

Koukos v. *Police* (1986) 2 C.L.R. 1;

R. v. *Towle and R.* v. *Wintle*, The Times of 29.1.86;

Iacovou and Others v. *Republic* (1976) 2 C.L.R. 114;

R. v. *Wilson* [1980] 1 All E.R. 1093 at p. 1095;

Antoniades v. *Police* (1986) 2 C.L.R. 21; 15

Nicolaou v. *Police* (1969) 2 C.L.R. 120;

Constantinou v *Republic* (1977) 9-10 J.S.C. 1527;

Iacovou and Another v. *Republic* (1977) 9-10 J.S.C. 1554;

Koufou v. *Police* (1979) 2 C.L.R. 134;

R. v. *Richards* [1956] 39 Cr. App. R. 191; 20

R. v. *Jeavons* [1964] Crim. L.R. 836;

R. v. *Reeves* [1964] Crim. L.R. 67;

R. v. *Williams* [1963] Crim. L.R. 865;

R. v. *Brown* [1964] Crim. L.R. 485;

R. v. *Sofflet* [1968] Crim. L.R. 622; 25

R. v. *Summers* [1972] 56 Cr. App. R. 612;

R. v. *Heyes* [1974] Crim. L.R. 57.

Appeals against sentence.

Appeals against sentence by Georghios K. Georghiou and Another who were convicted on the 11th October, 1985 at the Assize Court of Nicosia (Criminal Case No. 22410/85) on one count of the offence of shop-breaking and stealing contrary to sections 291, 294(a), 255 and 20 of the Criminal Code Cap. 154 and on one count of the offence of carrying firearm the importation of which is prohibited contrary to sections 2, 3(1) (a), and 2(a) of the Firearms Law, 1974 (Law No. 38 of 1974) and section 20 of the Criminal Code, Cap. 154 and were sentenced by Artemides, P.D.C., Laoutas, S.D.J. and Kramvis, D.J., to six years' and four years' imprisonment on each count, respectively, the sentences to run concurrently.

L. Georghiadou (Mrs.), for the appellant in Appeal No. 4685.

A. Paschalides, for the appellant in Appeal No. 4687.

M. Kyprianou, Senior Counsel of the Republic, for the respondents.

The following judgments were read:

A. LOIZOU J.: The two appellants were found guilty on their own plea on two counts, the first for shop-breaking and stealing contrary to sections 291, 294(a), 255 and 20 of the Criminal Code, Cap. 154, which offence carries a maximum sentence of imprisonment of seven years and the second for carrying a fire-arm, the importation of which is prohibited contrary to sections 2, 3(1)(a), 2(a) of The Firearms Law 1974, (Law No. 38 of 1974) as amended by Law No. 27 of 1978 and section 20 of the Criminal Code, Cap. 154, an offence that carries a maximum term of imprisonment of fifteen years.

At the trial before the Assize Court appellant 2 was accused No. 1 and appellant 1 was accused No. 2. There was also a third accused who was also found guilty on his own plea in respect of the same offences and sentenced to eighteen months' imprisonment on each count, whereas accused 1, (hereinafter to be referred to as appellant Teni-

zis), was sentenced to six years' imprisonment on each count, and accused 2, appellant 1, (hereinafter to be referred to as appellant Georghiou) was sentenced to four years' imprisonment on each count, sentences to run concurrently. 5

In passing sentence the Assize Court, on the application of all three accused and with the consent of the prosecution took also into consideration a number of outstanding offences which were admitted to have been committed by them. They were forty-seven in the case of appellant 10 Tenizis; Out of them forty-four were of a similar nature, that is shop-breaking and stealing, one of stealing a firearm from a military camp, that is the one the appellants were found carrying when committing the offence in respect of which they were tried and the last two referred to offences 15 of causing bodily harm, insult and misbehaviour in public places including insults and assaults causing bodily harm to policemen. Appellant Georghiou admitted to have committed thirty in all outstanding offences of shop-breaking and stealing and in the case of ex-accused 3, five offences of 20 which four were of a similar nature to the first count, whereas another one was for stealing the firearm, subject matter of the second count in the present case.

Detailed lists of all the offences containing the relevant particulars in respect of each of the accused was pro- 25 duced before the Assize Court and they are part of the record before us.

In my view it is unnecessary to give a detailed description of them all as it is sufficient for the purposes of this appeal to highlight certain of their characteristics. The of- 30 fences taken into consideration as regards appellant Tenizis started on the 30th August 1984 with shop-breaking at Strovolos from which a safe was stolen, transported in a stolen car to a locality nearby and after it was smashed, its contents amounting to £270 were stolen. They stopped 35 with his arrest on the 11th September, 1985 whilst engaged in the breaking into the Higher Technical Institute from which nothing was stolen as he was caught redhanded wearing at the time a mask and lady's stockings in his

hands, hence obviously, the absence of any fingerprints at the scenes of all crimes. The modus operandi was the same. They were mostly shop-breakings and house-breakings and stealing of safes which were carried away in stolen vehicles and their contents stolen therefrom after they were smashed with heavy tools though in some instances there was stealing of goods, valuables and money after forcible entry was gained into premises.

The offences taken into consideration in passing sentence on appellant Georghiou started on the 15th August 1983 with house-breaking and stealing therefrom jewels, a camera and a tape recorder and, again, they stopped with his arrest on the strength of a judicial warrant which followed that of appellant Tenizis whose disclosures led the Police to him and to ex-accused 3.

The five offences taken into consideration as against ex-accused 3, started on the 16th June, 1985 with the breaking, entering and stealing of a big safe which was taken to the rear yard of the factory which was smashed and an amount of £271.55 cents stolen therefrom. His criminal activities were short lived. They were stopped with his arrest after the commission of the offence of entering into the Higher Technical Institute from which nothing was stolen.

The total amount of money stolen in all cases was in the region of £30,000 and the value of goods £7,000 to £8,000. All money were squandered in discoteques and places of entertainment, in hiring of motorcycles etc. Of the various goods very little was recovered and restored to their rightful owners. They include, however, part of the gold and the commemorative metals of a total value of £2,800 out of £3,500 stolen from the safe of the house of Charalambos Makri, which was transported to Athalassa Forest in the car of the complainant himself which was also stolen. It should, however, be pointed out that out of these proceeds of crime the share of ex accused 3 was at the most £200 according to the prosecution, whereas he only admitted deriving a benefit not exceeding £80.

Appellant Tenizis has in spite of his age a rather long

record of previous convictions. In August 1981 he was sentenced to £10 fine for carrying a shot-gun during closed season. Two months later he was convicted for carrying an offensive weapon, that is a karate glob for which offence he was fined £20. In 1982 he had three previous convictions, one for assault, causing actual bodily harm for which he was sentenced to four months' imprisonment and placed on probation for two years. Another conviction for a similar assault for which he was sentenced to three months' imprisonment that was suspended for three years and stealing in respect of which the probation order was directed to be continued. In 1983 he had two more convictions, one for malicious damage for which he was sentenced to £50 fine and stealing to £10 fine and in November 1984, insult and affray £40 fine.

Appellant Georghiou was treated by the Assize Court as having a clean record as a previous conviction was ignored as not being similar to the offences under consideration. Ex accused 3 had also no previous convictions.

In order to complete the picture a brief reference may be made to the facts of the present case.

The Police was alerted because of frequently committed shop-breakings and stealing therefrom of large sums of money and other items. On the 11th September 1985, whilst the appellants were committing the breaking into the Higher Techonological Institute, appellant Tenizis was caught red-handed as already said. He immediately disclosed to the Police the names of his accomplices that is appellant Georghiou and ex-accused 3, who were subsequently arrested. Among those offences for which they confessed are the present ones.

In the early hours of the 1st July 1985, the three appellants drove in a stolen car to the Athletic Centre Lapatsa, which is outside the village of Tseri. In the Centre there exists also the "Le Jardin" Restaurant in the Kitchen of which was the safe of the business. The appellants removed the safe and after carrying it by car to an isolated place they smashed, opened it with the use of heavy tools. It contained the sum of £4,600 which was stolen by them.

Furthermore the audacity of the appellants and their accomplices is evident from the following incident. The nightwatchman of Lapatsa Athletic Centre locked up the premises after the last guests left at 3:00 a.m. He then noticed a white car stationed outside the closed gate of the swimming pool, he switched off the light, but he approached the car from behind the fence and heard some persons in it conversing. In an effort to warn these people of his presence he switched on the lights of the swimming-pool but the car remained at its position. He then tried to give the impression of commotion. He got his motorcycle and passed by the same spot where the white car was. He continued there patrolling until 3:55 in the morning when he saw the white car come with its lights switched off and stop outside the office and the kitchen of the Centre. He heard a noise and when he approached he saw the car driven quickly away to the direction of Deftera village. Later that morning it was discovered that the safe from the kitchen had been stolen. Another incident relevant to their attitude is the one regarding one of the stolen cars:

On the 1st July 1985, Athos Petrides reported to the Police that his white Gallant car under Registration No. 424 had been stolen at about mid-night of the previous day. The appellants later drove it and parked it in the yard of Strovolos Police Station where the Divisional Police Headquarters are and then left.

The automatic weapon, subject matter of the second count was stolen by appellant Tenizis and ex-accused 3 between the 26th and 30th June 1985, from a company of the National Guard stationed at the dividing line in the area of Sopaz in Nicosia.

On the totality of the circumstances I have come to the conclusion that there is no disparity of sentence in the present case but a proper and reasonable individualisation of same in the case of each accused. The Court clearly took into consideration the extent of the participation of each one of them in the criminal activities in question and the respective financial benefits derived therefrom. As already

seen in the case of ex-accused 3, there were only five outstanding offences taken into consideration and the benefit he obtained was according to his own statement £80 and according to the prosecution an amount between a hundred and two-hundred pounds, whereas in the case of appellants Tenizis and Georghiou the amounts of money and the value of goods stolen reached the region of thirty-seven thousand pounds, almost all squandered here and there with the exception of the part of the gold and certain other items which were recovered and returned to the owners at the conclusion of the case.

There is therefore no disparity whatsoever. Even if, however, there was some disparity, I would not interfere, as I am of the opinion that the sentence passed on the two appellants is correct. There was nothing wrong in the approach of the Court. To reduce these sentences passed on them would result in a further incorrect sentence and a Court should not be prepared to reduce the longer sentence so long as the disparity which may not exist is not particularly gross.

As regards disparity I had recently the opportunity to refer to a number of authorities in the case of *Koukos* v. *The Police* Criminal Appeal No. 4723* and also to the cases of *R.* v. *Towle* and *R.* v. *Wintle,* The Times 23.1.1986 where the test laid down was that when a Court was considering an appeal against sentence based on disparity what was relevant was whether right thinking members of the public knowing all the facts and looking at what had happened would say that something has gone wrong here in the administration of justice which has resulted in one or more convicted persons being treated unfairly.

I would conclude by pointing out the case of *Iacovou and Others* v. *The Republic* (1976) 2 C.L.R. 114 in which Triantafyllides P., in delivering the unanimous judgment of this Court dealt with the principle of disparity of sentence as a ground of appeal and quoted with approval from *Thomas on Principles of Sentencing* at pp. 69-70. I shall quote therefrom only a brief passage in which the position relevant to the case before us is duly summed up. It reads;

* Reported in (1986) 2 C.L.R. 1.

"The Court may take the view that his sentence is excessive when considered on its own merits, and reduce it on this ground, but a dilemma arises when the Court is of the opinion that the sentence passed on 5 the appellant is correct and those passed on his co-defendants are inadequate.To reduce the sentence passed on the appellant would result in a further incorrect sentence. In the face of this situation the Court will not normally reduce the long sentence unless the dis- 10 parity is particularly gross."

But this situation does not arise in the present case as in no way the sentence imposed on the appellants is manifestly excessive, nor is there disparity in any way.

I see no reason to depart from the aforesaid position. 15 The kind of criminal activity in which the appellants engaged causes more than concern and courts cannot tolerate it.

For all the above reasons these appeals should be dismissed.

20 DEMETRIADES J.: I have had the advantage of reading the judgment just delivered by my Brother Judge A. Loizou and I am in full agreement with it.

PIKIS J.: The appellants that I shall name to avoid confusion—Georghiou and Tenizis, and a co-accused Theo- 25 charous—pleaded guilty to two charges, a count of shopbreaking and theft, and one of carrying an automatic firearm. A fouth confederate, a certain Aristodemou, alias Youroukkis, was not prosecuted.

In the early hours of 1st July, 1985, the appellants, 30 armed with an automatic weapon, they carried wrapped in a gabartine, broke into Le Jardins Restaurant at Lapatsa Sporting Centre in the vicinity of Tseri, and removed therefrom the safe. Later, they unlocked it and removed a sum of £4,600.- (Four Thousand and Six Hundred Pounds), and 35 documents stored therein. They remained undeterred by the presence of the guard who, by a variety of devices, tried to warn them off without, however, confronting them. The crimes remained undetected at the time. Two months later,

Tenizis was arrested for another breaking; implements found in his pessession, seemingly gave to the police a clue about his connection with a multitude of breakings. Soon after his arrest he confessed to the commission of numerous crimes. In his confession he implicated his accomplices who were themselves arrested. Like Tenizis they confessed their crimes and sought, by the comprehensiveness of their confessions, to make a clean breast with their unsavoury past. In court they pleaded guilty to the charges brought against them and prayed for the leniency of the court. The fourth accomplice, Youroukkis, was not prosecuted. According to a statement of counsel for the Republic, the omission to prosecute him was due to the incompleteness of the investigation. The court was assured the process would be set in motion as soon as the docket of his case was complete. At the hearing of the appeal, we were informed the Attorney-General decided not to prosecute him because of the assistance given the police.

At the trial the appellants and co-accused Theocharous asked the court, pursuant to the provisions of s.81 of the Criminal Procedure Law—Cap. 155, to take into consideration, in passing sentence, a number of outstanding offences, mostly similar in nature. Thus, Tenizis asked the court to take into consideration 47 other offences, Georghiou 30 and Theocharous 5. One of the offences they requested to be taken into consideration, was the theft of the automatic firearm they later carried for the commission of the offences with which they were charged. The weapon had been stolen from a post of the National Guard, no doubt a grave offence. In the commission of the theft of the firearm, only two of the co-accused were implicated—Tenizis and Theocharous. Apart from an account of the facts surrounding the commission of the several offences, the court had before it social investigation reports that spoke of the background, character and circumstances of the accused. Tenizis, aged 20, was the child of a broken family who strayed, it seems, in the path of crime early on in life. He was burdened with a number of previous convictions but not of a similar nature to the offences to which he pleaded guilty. Prior to his conviction he had been fined, put on probation, and on one occasion sentenced to an immediate

term of four months' imprisonment. As it may be inferred, the leniency shown him by the courts, had no effect on his ways, nor did it stem his tendency to crime.

Unlike Tenizis, Georghiou had a clean record and was 5 described by those who knew him as a person of good character. His crimes were mostly attributed to bad associations; he was aged 23. Theocharous was likewise a first offender and by all accounts the least active member of the gang.

10 Tenizis was sentenced to six years' imprisonment, Georghiou to four and Theocharous to 18 months imprisonment.

There is no doubt from the statement of facts before the Assize Court that appellants and their confederates acted as a gang. The inference is they pursued their criminal 15 purposes ruthlessly with utter disregard to the property rights, peace and security of their victims. They stole in all 28 to 30 Thousand Pounds in cash, and valuables worth 10 Thousand Pounds. Only a small portion of their spoils—a sum of about 3 Thousand Pounds was restored; the rest 20 they squandered purposely in discotheques and other pleasure-deriving pursuits.

The least active of the gang and the one who pocketed less, a sum of only one to two hundred Pounds, was Theocharous. However, Theocharous was one of the two culprits 25 involved in the theft of the automatic weapon from the National Guard and, in that way, presaged the armed breaking of Le Jardins. Nevertheless, there is no mistaking he took part in the commission of serious criminal offences supporting, as invariably a confederate does support his 30 accomplices in their lawless ventures.

Those who masterminded the crimes were, as the police acknowledged, Youroukkis and Tenizis. The absence of Youroukkis from the dock did not go unnoticed by the court notwithstanding the statement of the prosecution that fai- 35 lure to prosecute him was solely due to incompleteness of the investigation and assurances that he would be prosecuted in due course.

The court took, as was bound to, a serious view of the crimes and the conduct of the accused, and drew attention to the duty of the court to protect the public. The gang had by the boldness and repetition of their crimes alarmed the public; it took the police months before they were able to detect them. 5

After reflecting on the part taken by each accused in the commission of the offences and attempting to measure their culpability in the overall context of the case, they sentenced Georghiou to four years' imprisonment, Tenizis to six, and 10 Theocharous to eighteen months' imprisonment. As could be expected, Theocharous did not challenge his sentence. Georghiou and Tenizis did so on the ground that their sentence was manifestly excessive. As it was pointed out in *R.* v. *Wilson*[1], an appeal against sentence does, by the terms 15 of the Criminal Appeal Act 1968, put the whole sentencing position into question and, therefore, every aspect of it must be looked into. Cyprus Statute Law has the same effect, namely s.25 subsections 2 and 3 of the Courts of Justice Law—14/60, and s.145(2) of the Criminal Procedure Law 20 —Cap 155. An appeal against sentence on grounds of excessiveness necessitates examination of the propriety of the sentence from every viewpoint.

Counsel for Georghiou and Tenizis argued the sentences imposed on the appellants were excessive on their own me- 25 rits, as well as on comparison with that passed on Theocharous. Given the gravity of the offences, their numbers, the scheming involved and implications on society, the punishments imposed were not excessive notwithstanding the clean record of Georghiou and the youth of Tenizis. Organised 30 crime of this magnitude cannot but be condemned in the severest terms. Only recently, in *Antoniades* v. *The Police*[1], we drew attention to the prevalence of shop-breaking offences that have assumed proportions of a social evil and, pointed out that in face of this challenge Courts cannot 35 remain passive or inactive. The following passage reflects the duty of the court in face of the rising tide of property

[1] [1980] 1 All E.R. 1093, 1095 (letter G), C.A.
[2] Decided on 12.3.86—published in (1986) 2 C.L.R. 21.

offences: "Correspondingly severe sentences must be imposed to protect society from this menace. The effectiveness of the law depends to a large extent on the choice of proper punishment in different areas of law-breaking." The duty to individualise sentence, it was stated later in the judgment of the court, should not lead to "the neutralisation of the effectiveness of the law." Necessary as it is to strive to individualise sentence the person of the accused cannot be extricated from his criminal conduct. Where, as in this case, the facts expose him as a danger to society, little room is left to individualise sentence beyond marginally scaling it down. The sentences were not, as I hold, excessive viewed on their own merits.

More emphasis was laid on the relative excessiveness of the sentences deriving from comparison with the sentence imposed on Theocharous. Three confederates who took part in the same criminal enterprise and were habitually acting in concert were punished, so it was argued, in a dramatically different manner rendering, as a result, appellants' sentences excessive on grounds of unequal treatment.

Counsel for the Republic submitted there is no room for interfering with a sentence when it is not on its own merits excessive. He did not, it must be added, support his submission by reference to any authority, Cyprus or English. I am unable to sustain this submission; it is contrary to principle, as well as authority. Equality of treatment of the co-accused is not only an attribute of fairness and as such a command of justice, but is constitutionally safeguarded by Article 28 of the Constitution ordaining equality before the law and the administration of justice: "All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby." (Article 28—paragraph 1). Following the constitutional edifice, Cyprus courts have consistently adhered to the principle that a sentence otherwise justified may become excessive on comparison with the sentence passed on a co-accused and for that reason become liable

to be reduced in the interests of justice[1]. Parity of treatment and its implications were extensively discussed in a recent decision of the Supreme Court, notably *Koukos* v. *The Police*[2]. Equality of treatment, we observed, is a salient feature of the administration of justice necessary to sustain faith in the law and the administration of justice. On the other hand, equality in this as in other areas does not, as we stressed, connote mathematical nicety. Nor, we added, ".... is the principle of parity of sentences designed to blunt the sentencing process by eliminating the discretion of the court to impose on each of the accused a sentence that takes due account of both the intrinsic culpability of his conduct and personal circumstances. For disparity to make an impact on appeal the difference between the sentences imposed must be substantial, such as to suggest, in the face of strong similarity in the position of the accused, that justice is not done and for that reason liable to generate feelings of injustice on the part of the appellant."

A similar approach has been consistently followed by English courts; in fact it has guided in some respects our courts in putting equality of treatment in perspective. As explained in *Archbold*[3], in an appropriate case the court may reduce a sentence, objectively justified, on account of its disparity compared to a sentence imposed on a co-accused. Numerous cases are cited evidencing the inclination of the court to interfere on this score[4]. The subject of disparity of sentence and disparity as a ground of appeal is discussed in greater detail by *Thomas* in *Principles of Sentencing*[5] On a review of English caselaw the learned

[1] See, inter alia, Nicolaou v Police (1969) 2 C L R 120, Constantinou v Republic (1977) 9-10 J S C 1527, Iacovou and Another v. Republic (1977) 9-10 J S C 1554, Koufou v Police (1979) 2 C L R 134

[2] Decided on 5 3 86—published in (1986) 2 C L R 1 —A majority decision of the Court of Appeal

[3] Criminal Pleading Evidence and Practice, 39th ed para 650

[4] See, R v Richards [1956] 39 Cr. App R 191, R v Jeavons [1964] Crim L R 836, see too R v Reeves (1964) Crim L R 67, R v Williams [1963] Crim L R. 865, R v Brown [1964] Crim L R. 485; R v Sofflet [1968] Crim L R 622, R v Summers [1972] 56 Cr App R 612 C A, R v Heyes [1974] Crim L R 57 C A)

[5] 2nd edition, pages 64-73

author concludes that the court may interfere and reduce a sentence otherwise justified if there is a glaring difference in the treatment of co-accused. What such difference should be to justify interference was depicted by the court
5 in *Brown and Others* [1975] Crim. L.R. 177, as follows: "Such a glaring difference between the treatment of one man as compared with another that a real sense of grievance would be engendered." The author points out that there are many illustrations in practice of interference on
10 this score, two notable examples of which are the cases of *Stevens*[1] *and Hutchinson* and *Hutchinson*[2]. In the latter case the court held that though a sentence of four years on one of the two perpetrators was "perfectly proper", the sentence became indefensible on grounds of inequality of
15 treatment arising from comparison with that imposed on his co-accused and was on that account reduced. The ultimate question we must decide is whether there was justification for the different treatment accorded to the co-accused, members of the same gang, and persons who be-
20 longed to the same age group. Further, appellants *Georghiou* and Theocharous had one other feature in common, they were first offenders. The question we must clarify is not what we regard a proper ratio between the sentences imposed on the co-accused but whether it was reasonably
25 open to a criminal court to make the distinctions reflected in the different sentences passed on the co-accused. We explained in *Koukos*, supra, that intrinsic culpability is a prime factor by reference to which the courts may differentiate between the sentences imposed on co-accused. In
30 *Thomas*, it is explained that a distinction is perfectly justified between sentences imposed on those "who have planned or initiated offences and those who have followed their lead or joined in existing criminal enterprises." A number of English cases are cited, supporting this propo-
35 sition3.

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1 (cited on p. 72 of the Book).

2 (Cited at p. 67 of the Book).

3 (Summarised in Thomas, p. 67, see cases cited under footnotes 1 and 2).

I have anxiously reflected on the disparity between the sentences imposed on the co-accused with a view to determining whether there is room for interference. Theocharous was, unlike the appellants, a passive member of the gang who mostly followed the lead of his confederates and reaped little benefit therefrom. Moreover, his overall criminality was substantially lower than that of the appellants, considering he joined only in a limited number of criminal enterprises. I feel constrained to conclude, somewhat reluctantly I confess, it was reasonably open to the Assize Court to distinguish between the sentences passed on the co-accused in the way the Court did; though I must hasten to add that had I been concerned as a trial Court to punish the co-accused, I would not have approved the great differentiation made by the trial Court. On the other hand, the appellants will not leave the Appeal Court with a feeling of injustice for they are well acquainted with the facts of the case and know full well that Theocharous was mostly an instrument in their hands.

Lastly, the failure of the prosecuting Authority to bring to justice Youroukkis, one of the gang leaders. We are not here concerned to review the decision of the Attorney-General not to prosecute, but with the propriety of the sentence imposed on the appellants having regard to the non prosecution of one of the principal culprits. The question here is not equality of treatment between the co-accused but the allowance made on that account by the Assize Court. The Assize Court correctly addressed itself to the failure to prosecute Youroukkis as a mitigating factor. Again, had I been concerned to punish the appellants as a trial court, I would have made greater allowance than the one made by the trial Court on account of the non punishment of one of the principal offenders. Equality of treatment, safeguarded by Article 28, is an all embracing concept, encompassing the criminal process in its entirety. On the other hand, I remind once more, I am here sitting as a member of the Court of appeal, and the question is whether the trial Court ought unavoidably to make bigger allowance on account of that midicating factor.

After due reflection and a degree of hesitation, I have once more concluded there is no room for interference for the Court. Hence, the appeals should be dismissed.

Appeals dismissed.